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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ADAM KARTIGANER,

Plaintiff and Appellant,

v.

COMMUNITY PET HOSPITAL,

Defendant and Respondent.

B240887

(Los Angeles County
Super. Ct. No. NC056420)

APPEAL from an order of the Superior Court of Los Angeles County, Patrick T. Madden, Judge. Dismissed.

Adam Kartiganer, in pro. per., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith and Judith M. Tishkoff for Defendant and Respondent.

Plaintiff Adam Kartiganer appeals the dismissal without prejudice of his action for failure to timely serve the summons and complaint. Because plaintiff did not timely file a notice of appeal, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the present action on August 8, 2011, against Community Pet Hospital (Pet Hospital), Dempsey's Sports Bar and Grill (Dempsey's), and Does 1-50. The complaint alleges that employees of the Pet Hospital assaulted plaintiff on a public street on August 6, 2009, and then fled into Dempsey's, where they were allowed to wash blood off themselves and hide from police.

On the same day plaintiff filed his complaint, the superior court filed a notice entitled "Order to Show Cause Hearing." It advised plaintiff he was required to attend an Order to Show Cause Hearing on October 24, 2011, to show cause why sanctions should not be imposed for his failure to file proof of service of the summons and complaint pursuant to California Rules of Court, rule 3.110(b) and (c). The notice stated that to avoid a mandatory appearance, all required documents must be filed at least five court days prior to the date of the hearing.

Plaintiff neither served the summons and complaint prior to October 24, 2011, nor appeared at the October 24, 2011 hearing. Accordingly, the court dismissed the action without prejudice "pursuant to Section 583.410(a) CCP." The same day, the court clerk served plaintiff by mail with a file-stamped copy of the minute order dismissing the action.

On April 23, 2012, plaintiff filed a notice of appeal of the judgment of dismissal. Thereafter, this court directed plaintiff to show cause why the appeal should not be dismissed as untimely. Plaintiff filed a response, and the court deferred ruling pending full briefing of the appellate issues.

DISCUSSION

The filing of a timely notice of appeal is a jurisdictional prerequisite. ““Unless the notice is actually or constructively filed within the appropriate filing period, an appellate court is without jurisdiction to determine the merits of the appeal and must dismiss the appeal.” [Citations.] The purpose of this requirement is to promote the finality of judgments by forcing the losing party to take an appeal expeditiously or not at all. (*In re Chavez* (2003) 30 Cal.4th 643, 650)” (*Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106, 113.) We therefore begin by considering whether plaintiff’s notice of appeal was timely filed.

California Rules of Court, rule 8.104(a) provides that a notice of appeal must be filed “on or before the earliest of”:

“(1)(A) 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, showing the date either was served;

“(B) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or

“(C) 180 days after entry of judgment.”

As used in this section, “judgment” “includes an appealable order if the appeal is from an appealable order.” (Cal. Rules Court, rule 8.104(e).)

Pursuant to Code of Civil Procedure, section 581d, a written dismissal of an action “shall be entered in the clerk’s register and is effective for all purposes when so entered.” All dismissals ordered by the court “shall be in the form of a written order signed by the court and filed in the action *and those orders when so filed shall constitute judgments and be effective for all purposes*” (Italics added; see also *Bernard v. City of Oakland* (2012) 202 Cal.App.4th 1553, 1558, fn. 3 [“a written, signed order dismissing a complaint is treated as an appealable judgment”].) Thus, so long as it is “in the form of a written order signed by the court and filed in the action,” an order of dismissal is

appealable. (E.g., *Etheridge v. Reins Internat. California, Inc.* (2009) 172 Cal.App.4th 908, 913.)

In the present case, the trial court’s minute order dismissing the case was both “signed by the court” and “filed in the action.” It therefore constituted a judgment within the meaning of Code of Civil Procedure, section 581d. For plaintiff’s appeal to be timely, therefore, plaintiff had to file a notice of appeal within 60 days of the date that the superior court clerk served on plaintiff “a document entitled ‘Notice of Entry’ of [the order of dismissal] or a file-stamped copy of the [order of dismissal],” *or* 180 days after entry of dismissal, whichever came first. (Cal. Rules Court, rule 8.104.)

The superior court clerk served plaintiff with a file-stamped copy of the order of dismissal on October 24, 2011. To be timely, plaintiff’s notice of appeal therefore had to be filed within 60 days of service, i.e., on or before December 23, 2011. Plaintiff did not file his notice of appeal until April 23, 2012; it therefore was untimely.

DISPOSITION

The appeal is dismissed.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.